

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

D.H. PORTER ENTERPRISES, LLC

PLAINTIFF,

v.

MARCELLUS MCKINLEY

DEFENDANT.

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CASE NO.: 8:23-cv-02069-AAQ

**DEFENDANT’S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF’S
AMENDED COMPLAINT, AND DEMAND FOR TRIAL BY JURY**

Defendant Marcellus McKinley (“Defendant”), through undersigned counsel, submits his Answer, Affirmative Defenses, and demand for trial by jury responsive to the First Amended Complaint filed by Plaintiff D.H. Porter Enterprises, LLC d/b/a Staffing Etc. (“Plaintiff”), as follows:

PARTIES AND JURISDICTION

1. Admit.
2. Defendant denies the allegation classifying him as an “independent contractor,” but for the jurisdictional purpose of this allegation, admits the accuracy of the allegation as related to his Virginia citizenship and residence.
3. Admit. Defendant, however, denies the merits and/or Plaintiff’s entitlement to recovery of any amount sought or claimed in this action.
4. Admit.

FACTS COMMON TO ALL COUNTS

5. Admit.
6. Deny.

- 7. Deny.
- 8. Deny.
- 9. Deny.
- 10. Deny.
- 11. Admit.
- 12. Deny.
- 13. Admit.
- 14. Deny.
- 15. Deny.
- 16. Deny.
- 17. Deny.

COUNT I. DECLARATORY JUDGMENT, AGREEMENT

18. Defendant incorporates his prior responses to Plaintiff's prior allegations as his response in this paragraph.

19. No factual allegation is made for which Defendant is asked to admit or deny.

20. Admit.

21. No factual allegation is made for which Defendant is asked to admit or deny. To the extent this paragraph suggests Defendant was a non-employee independent contractor, Defendant denies the same and asserts he was Plaintiff's employee with rights and protections as set forth under the Maryland Wage Payment Act.

22. No factual allegation is made for which Defendant is asked to admit or deny. To the extent this paragraph suggests Defendant was a non-employee independent contractor, Defendant denies the same and asserts he was Plaintiff's employee with rights and protections as set forth under the Maryland Wage Payment Act.

23. No factual allegation is made for which Defendant is asked to admit or deny. To the extent this paragraph suggests a Declaratory Judgment is a proper or appropriate in the context of this dispute, Defendant denies.

24. No factual allegation is made for which Defendant is asked to admit or deny. To the extent this paragraph suggests a Declaratory Judgment is a proper or appropriate in the context of this dispute, Defendant denies.

25. No factual allegation is made for which Defendant is asked to admit or deny. To the extent this paragraph suggests a Declaratory Judgment is a proper or appropriate in the context of this dispute, Defendant denies.

COUNT II. UNJUST ENRICHMENT

26. Defendant incorporates his prior responses to Plaintiff's prior allegations as his response in this paragraph.

Allegation Numbered "d." Deny.

27. Deny.

28. Deny.

Allegation Numbered "e." Deny.

COUNT III. CONTRACT BREACH, AGREEMENT

31. Defendant incorporates his prior responses to Plaintiff's prior allegations as his response to this paragraph.

- 32. Deny.
- 33. Deny.
- 34. Deny.
- 35. Deny.
- 36. Deny.
- 37. Deny.

RESPONSE TO PLAINTIFF’S PRAYER FOR RELIEF

Defendant denies all unlawful, wrongful, and/or tortious acts or omissions alleged by Plaintiff in its Amended Complaint and entirely deny Plaintiff’s alleged right or entitlement to any relief or recovery in this action.

AFFIRMATIVE DEFENSE¹

- 1. Plaintiff’s Amended Complaint, in whole or in part, fails to state a claim upon which relief may be granted.
- 2. In the context of this action and in this Court, Defendant has no legal right to request or receive a Declaratory Judgment.
- 3. At all times relevant to this action, Plaintiff was Defendant’s “employer” under the Maryland Wage Payment Act.
- 4. At all times relevant to this action, Defendant was Plaintiff’s “employee” under the Maryland Wage Payment Act.

¹ By pleading the Defenses herein, Defendant does not concede that each of the matters covered by the numbered Defenses is to be proven by Defendant, and Defendant reserves his position that Plaintiff retains the burden of proof on all matters necessary to state the claims asserted in the Amended Complaint and to establish any alleged damages.

5. Plaintiff's claims, in part, are not recoverable in this action because of applicable statutes of limitations.
6. Plaintiff's alleged damages are not recoverable in this action because any alleged damage resulted from Plaintiff's own acts or omissions.
7. Plaintiff's entitlement to legal or equitable relief is barred by estoppel and/or unclean hands/*in pari delicto*.
8. At no time did Defendant breach and/or non-perform any duty or requirement under any Agreement with Defendant.
9. At no time did Defendant breach and/or act in a manner such that equity and/or considerations of fairness entitle Plaintiff relief in this action.
10. Defendant performed all duties and/or requirements under each Agreement with Plaintiff such that earned and unpaid wages are owed by Plaintiff to Defendant and not by Defendant to Plaintiff as alleged in the Amended Complaint.
11. Any breach by Defendant of any agreement and/or obligation to Plaintiff was waived, forgiven, or negated by prior breach or similar act by Plaintiff.
12. Plaintiff's damages, if any, are offset by unpaid wages and other damages owed by Plaintiff to Defendant as set forth in Defendant's Counterclaim against Plaintiff in this action.
13. Defendant reserves the right to amend this Answer to assert different or additional defenses or to amend any of its admissions, denials, or other responses.
14. Defendant denies that Plaintiff is entitled to any of the relief prayed for, or to any relief whatsoever.

15. Defendant denies each allegation in the Complaint that is not specifically admitted herein.

WHEREFORE, having fully responded to Plaintiff's Amended Complaint, Defendant respectfully requests the Court dismiss Plaintiff's claims, with prejudice, award Defendant his costs and reasonable attorneys' fees incurred in defending Plaintiff's claims in this action, and allow Defendant such other and further relief as the Court or a jury deems just and proper.

DEMAND FOR TRIAL BY JURY

Defendant requests a trial by jury on all facts and issues so triable.

Dated: August 21, 2023

Respectfully submitted,

ZIPIN, AMSTER & GREENBERG, LLC

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